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HOUSE BILL 927

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Thomas A. Anderson

AN ACT

RELATING TO MILITARY AFFAIRS; CHANGING THE NAME OF THE NEW
MEXICO STATE DEFENSE FORCE TO THE NEW MEXICO STATE GUARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 20-1-4 NMSA 1978 (being Laws 1987,
Chapter 318, Section 4) is amended to read:

"20-1-4. GOVERNOR TO BE COMMANDER-IN-CHIEF--ENFORCEMENT
OF NEW MEXICO MILITARY CODE.--

A. The governor shall be the commander-in-chief of
the military forces, except so much thereof as may be in the
actual service of the United States, and may employ the
military forces for the defense or relief of the state, the
enforcement of its law and the protection of life and property
therein.

B. Whenever the governor or acting governor is

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1 unable to personally perform the duties of commander-in-chief
2 or whenever the governor so directs, the adjutant general or,
3 in [~~his~~] the adjutant general's absence, the senior line
4 officer of the national guard present for duty with the troops
5 shall command the military forces.

6 C. The governor may appoint a staff consisting of
7 the adjutant general and aides-de-camp of field grade or higher
8 who shall be detailed from the national guard or the state
9 [~~defense force~~] guard. The governor may designate honorarily
10 other persons as colonels aide-de-camp.

11 D. The governor may, by executive orders,
12 proclamations or regulations not inconsistent with law, enforce
13 all the provisions of the New Mexico Military Code."

14 Section 2. Section 20-1-6 NMSA 1978 (being Laws 1987,
15 Chapter 318, Section 6, as amended) is amended to read:

16 "20-1-6. PAYMENTS BY STATE TREASURER--CERTIFICATES OF
17 INDEBTEDNESS.--

18 A. All compensation of personnel and all the
19 necessary expenses incurred in quartering, housing, caring for,
20 subsisting, protecting, equipping, warning for duty and
21 transporting such officers and members and their equipment,
22 including the purchase or lease of any articles of material,
23 equipment or supplies reasonably required, designed or needed
24 to accomplish the purpose or results desired by the governor or
25 specified in [~~his~~] the governor's call for such troops into

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1 service of the state, shall be paid by the state. The state
2 treasurer, upon presentation to [~~him~~] the state treasurer of
3 vouchers and payrolls for such compensation, expenses, supplies
4 and materials, certified by the officers commanding such forces
5 and approved by the adjutant general, shall pay the vouchers
6 and payrolls out of any money available in the state treasury
7 not otherwise appropriated, provided that the vouchers and
8 payrolls for such service, supplies and materials do not exceed
9 two hundred fifty thousand dollars (\$250,000) in any one fiscal
10 year.

11 B. If there is no money available in the state
12 treasury [~~which~~] that is not otherwise appropriated or if the
13 vouchers and payrolls for such service, material and supplies
14 approach the amount of two hundred fifty thousand dollars
15 (\$250,000) in any one fiscal year, the state treasurer shall
16 certify such facts to the governor, who shall inquire into and
17 make an estimate of the total probable cost necessary to be
18 incurred for all purposes in connection with or to accomplish
19 the purpose for which such troops were called into active
20 service. If [~~he~~] the governor deems it necessary and prudent
21 in order to provide for the public defense that such expenses
22 be incurred and that it is necessary to create an indebtedness
23 for the purpose of paying the expenses, the governor shall by
24 proclamation declare an emergency to exist requiring the
25 creation of an indebtedness under Article 9, Section 7 of the

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1 constitution of New Mexico in order to suppress insurrection or
2 to provide for the public defense. The governor shall order
3 the issuance of certificates of indebtedness in such amount as
4 [he] the governor deems required or necessary to provide funds
5 for the payment of [~~any~~] expenses and costs incident to or
6 connected with the emergency.

7 C. The certificates of indebtedness shall be approved
8 as to form by the attorney general. They shall be dated the
9 day of their issuance and the state board of finance shall by
10 proper resolutions prescribe the denominations of the
11 certificates, the maturity dates thereof, the rate of interest
12 they shall bear payable semiannually, the time and place of
13 payment of both principal and interest and the amount of the
14 certificates that shall be issued from time to time. The
15 certificates shall be signed by the secretary of the state
16 board of finance and the state treasurer and the coupons
17 attached thereto shall have the engraved lithographed facsimile
18 of the signature of the state treasurer thereon; provided,
19 however, that certificates purchased by the state treasurer may
20 be issued without coupons. The certificates shall be sold by
21 the state board of finance from time to time in such amounts as
22 it deems advisable, at not less than par and accrued interest
23 to date of delivery, after advertisement for a period of two
24 weeks immediately prior to the sale in one daily newspaper in
25 the state and in some financial journal in the city and state

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1 of New York; provided, however, that the state treasurer may
2 purchase the certificates as an investment of any funds in
3 [~~his~~] the state treasurer's hands available for investment and
4 in the event of any such purchase by [~~him~~] the state treasurer,
5 no advertisement shall be required. The proceeds of
6 certificates so sold shall be by the state treasurer covered
7 into a fund known as the "adjutant general emergency public
8 defense fund" and shall be expended and disbursed only in the
9 manner and for the purposes specified and provided for in
10 Chapter 20, Article 1 NMSA 1978.

11 D. A fund to be known as the "adjutant general
12 emergency public defense certificates fund" to provide for the
13 payment of interest and principal on the foregoing certificates
14 is established and, beginning with the tax levy for the year
15 following the issuance of the certificates, a tax shall be
16 levied annually in the same manner as other ad valorem taxes
17 are levied on all taxable property in the state, not to exceed
18 one-half mill on the dollar of valuation, sufficient to produce
19 the amount required to pay interest on the certificates and the
20 principal thereof at maturity, for each year prior to the
21 maturity of the certificates, which taxes when collected shall
22 be credited to the adjutant general emergency public defense
23 certificates fund. The state auditor shall each year prior to
24 August 1 certify to the property tax division of the taxation
25 and revenue department the amount necessary to meet all

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1 payments of principal and interest due on the certificates
2 during the year ending June 30 following the date of the
3 certificates.

4 E. On or before the twentieth legislative day of the
5 next legislative session following the expenditures of the sums
6 provided for in this section, the governor shall file a written
7 report with the presiding officer of each house of the
8 legislature setting forth the purpose and the amounts of money
9 expended as provided in this section.

10 F. The provisions of this section may be used for the
11 operation of the national guard or the state [~~defense force~~]
12 guard when on militia duty."

13 Section 3. Section 20-2-1 NMSA 1978 (being Laws 1987,
14 Chapter 318, Section 8) is amended to read:

15 "20-2-1. DEFINITIONS AND PRINCIPLES.--

16 A. "Militia" means all the military forces of this
17 state, organized and unorganized, whether active or inactive;
18 but excludes the regularly organized police forces of the state
19 or its political subdivisions and excludes the civil air patrol
20 division.

21 B. "National guard" means the New Mexico army
22 national guard and the New Mexico air national guard. The
23 national guard is federally recognized and has a dual state and
24 federal character and mission. When used in Chapter 20 NMSA
25 1978, "national guard" shall refer to the national guard of New

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1 Mexico unless otherwise stated.

2 C. "New Mexico state defense force" means that part
3 of the militia of the state [~~which~~] that is not federally
4 recognized. It is exclusively a state entity. Its standing
5 cadre is a component of the organized militia; its ranks are
6 filled upon order of the governor from the unorganized militia.
7 When used in Chapter 20 NMSA 1978, "state defense force" shall
8 refer to the New Mexico state [~~defense force~~] guard."

9 Section 4. Section 20-2-2 NMSA 1978 (being Laws 1987,
10 Chapter 318, Section 9) is amended to read:

11 "20-2-2. MILITIA COMPOSITION.--The militia is composed of
12 the organized and the unorganized militia.

13 A. The organized militia is the national guard and
14 the standing cadre of the state [~~defense force~~] guard and such
15 parts of the unorganized militia when and as may be activated,
16 enrolled or enlisted into the national guard or into the state
17 [~~defense force~~] guard.

18 B. The unorganized militia [~~is comprised of~~]
19 comprises all able-bodied [~~male citizens~~] residents of the
20 state and all other able-bodied [~~males~~] residents who have or
21 shall have declared their intentions to become citizens of the
22 United States and are residents of the state who are not less
23 than eighteen or more than forty-five years of age, but who
24 shall not be more than sixty-four years of age if they shall
25 have earlier served in or retired from the national guard;

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1 subject to the following exceptions:

2 (1) persons exempted by the laws of the United
3 States from federal military service;

4 (2) persons who are engaged in civilian
5 occupations [~~which~~] that are deemed by the governor to be of
6 greater public service or necessity than would be their service
7 in the militia if called into active service of the state;

8 (3) persons who have received dismissal, a
9 dishonorable discharge, a bad conduct discharge, an undesirable
10 discharge or a discharge under other than honorable conditions
11 from any military component; and

12 (4) persons in active federal military service
13 or retired military members subject to federal recall to active
14 military service.

15 C. The adjutant general may prescribe plans by
16 regulation for the orderly activating and detailing of the
17 unorganized militia and its members, to include mission
18 analysis and personnel classification. Enrollment or
19 enlistment of members of the unorganized militia may be into
20 the national guard, subject to federal criteria, or into the
21 state [~~defense force~~] guard, as determined by the governor.

22 D. The governor may authorize the voluntary
23 appointment or voluntary enlistment of female citizens of the
24 state into the noncombat branches and services of the organized
25 militia and while so serving they shall have the same status as

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1 male members."

2 Section 5. Section 20-2-6 NMSA 1978 (being Laws 1987,
3 Chapter 318, Section 13) is amended to read:

4 "20-2-6. GOVERNOR--CALL FOR FEDERAL OR STATE SERVICE--
5 POWERS.--

6 A. When the national guard or a part thereof is
7 called or ordered into active federal service under the
8 constitution and laws of the United States and the numbers or
9 composition of the national guard forces are insufficient to
10 meet such call or order, the governor may order out and cause
11 through the adjutant general to be enrolled into the organized
12 militia such persons as may be required and expected to
13 reasonably meet the federal call or order.

14 B. The governor may order out the organized militia
15 when:

16 (1) the national guard or any significant
17 portion thereof is called or ordered into active federal
18 service and the remaining national guard forces are
19 insufficient for the needs of the state; or

20 (2) the total strength or composition of the
21 national guard within the state is deemed by the governor to be
22 insufficient to meet a major disaster, experienced or
23 anticipated. The governor is authorized to call into active
24 state service the state [~~defense force~~] guard or any portion
25 thereof as may be necessary for the protection and well being

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1 of the state. If the numbers or composition of the state
2 [~~defense force be~~] guard is inadequate to meet the need, the
3 governor [~~can~~] may call out and cause through the adjutant
4 general to be enrolled from the unorganized militia such
5 persons as are required to bring the organized militia up to
6 strength."

7 Section 6. Section 20-2-8 NMSA 1978 (being Laws 1987,
8 Chapter 318, Section 15) is amended to read:

9 "20-2-8. HONORARY PROMOTION UPON RETIREMENT.--Members of
10 the organized militia may be promoted by the governor to the
11 next higher grade [~~on the occasion of~~] upon their retirement
12 from service under the following conditions:

13 A. that the member has honorably served either a
14 total of thirty years in the federal military or organized
15 militia combined or a minimum of twenty years in the organized
16 militia, provided that no period of less than ten years in the
17 state [~~defense force~~] guard shall be credited toward either of
18 these requirements; and

19 B. that the honorary promotion be requested by the
20 member and be favorably recommended by the adjutant general."

21 Section 7. Section 20-3-2 NMSA 1978 (being Laws 1987,
22 Chapter 318, Section 17) is amended to read:

23 "20-3-2. DEPARTMENT STRUCTURE--AUTHORITY OF ADJUTANT
24 GENERAL.--

25 A. The department of military affairs is composed of:

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- 1 (1) the office of the adjutant general;
2 (2) three subordinate military divisions:
3 (a) the army national guard division;
4 (b) the air national guard division; and
5 (c) the state [~~defense force~~] guard

6 division;

- 7 (3) one subordinate civil division, the civil
8 air patrol division; and

- 9 (4) four subordinate support agencies:
10 (a) the selective service office;
11 (b) the state armory board;
12 (c) the state programs office; and
13 (d) the United States property and fiscal

14 office and such other agencies, administrative staffs and
15 clerical staffs necessary for departmental operation [~~which~~]
16 that the adjutant general may by regulation prescribe.

17 B. The adjutant general is the military chief of
18 staff to the governor and is the head of the department of
19 military affairs.

20 C. The adjutant general shall prescribe policies,
21 rules and procedures for the orderly functioning of the
22 department of military affairs, which may include subordinate
23 organizational structures and lines of authority.

24 D. The adjutant general may employ such
25 administrative, technical, clerical and other personnel as [~~he~~]

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1 the adjutant general deems necessary and may fix the
2 compensation of exempt personnel subject to the concurrence of
3 the department of finance and administration.

4 E. The adjutant general may make expenditures from
5 appropriations or from other funds available to [~~him~~] the
6 adjutant general for all purposes within Chapter 20 NMSA 1978.

7 F. The adjutant general is authorized to accept
8 through the United States property and fiscal officer such
9 equipment, supplies, arms, facilities and personnel support
10 funding as may be authorized and appropriated by federal law.

11 G. The adjutant general shall be furnished suitable
12 buildings, facilities, supplies and equipment for conducting
13 the business of the department of military affairs to include
14 the proper storage, repair and issuance of military property.

15 H. The adjutant general may appoint as assistant
16 adjutants general one officer from each of the three military
17 divisions in the department of military affairs. The officers
18 [~~so~~] appointed shall hold the rank of brigadier general during
19 such appointment. The qualifications of each person so
20 appointed shall meet the specific standards required for such
21 appointment within Chapter 20 NMSA 1978 and any applicable
22 federal standards or [~~requirements~~] requirements. Once
23 appointed, the assistant adjutants general shall serve at the
24 pleasure of the adjutant general; their performance will be
25 reviewed annually, in January, by the adjutant general; and if

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1 relieved, an assistant adjutant general shall revert to the
2 rank previously held or to such higher rank to which promoted
3 and federally recognized while serving as assistant adjutant
4 general. The adjutant general may designate one federally
5 recognized assistant adjutant general as deputy adjutant
6 general and another federally recognized assistant adjutant
7 general as vice-deputy adjutant general. The deputy adjutant
8 general shall serve on full-time active status for the state.
9 In the incapacity or absence from the state of the adjutant
10 general, the deputy adjutant general shall act in ~~[his]~~ the
11 adjutant general's stead. In the incapacity or absence from
12 the state of both the adjutant general and the deputy adjutant
13 general, the governor may call the vice-deputy adjutant general
14 to active service for the state. The assistant adjutants
15 general shall perform all duties that may be required of them
16 by the adjutant general. The adjutant general may delegate in
17 writing to any of the assistant adjutants general such
18 authorities and responsibilities as ~~[he]~~ the adjutant general
19 deems appropriate, consistent with the constitutions, laws and
20 regulations of the state and of the United States. Assistant
21 adjutants general, when on active status for the state, shall
22 receive the same pay and allowances as ~~[is]~~ are prescribed by
23 federal law and regulations for members of the active military
24 in the grade of brigadier general, unless a different rate of
25 pay and allowances ~~[are]~~ is specified in a general

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1 appropriation act of the New Mexico legislature.

2 I. The adjutant general shall appoint individuals to
3 serve as director of the one civil division and as head of each
4 of the four support agencies, except as stated in Section
5 20-9-1 NMSA 1978. The qualifications of each person so
6 appointed shall meet the specific standards required for such
7 appointment within Chapter 20 NMSA 1978 and any applicable
8 federal standards or requirements.

9 J. There shall be allowed to the adjutant general a
10 contingent and entertainment fund of [~~twenty-five hundred~~] two
11 thousand five hundred dollars (\$2,500) annually, plus such
12 additional appropriations for carrying out the functions of
13 [~~his~~] the office as the legislature shall deem proper."

14 Section 8. Section 20-4-12 NMSA 1978 (being Laws 1987,
15 Chapter 318, Section 29) is amended to read:

16 "20-4-12. MILITARY LAST WILL AND TESTAMENT FOR NATIONAL
17 GUARD AND RESERVES.--

18 A. Notwithstanding any other provision of law to the
19 contrary, any member of the national guard or reserves may
20 execute a military last will and testament (military will)
21 according to the provisions of this section. Such will may be
22 executed within or without the state and shall be given the
23 same force and effect as any will properly executed pursuant to
24 Chapter 45 NMSA 1978, the provisions of which shall govern the
25 rules of construction of a military will and the administration

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1 of the testator's estate.

2 B. Mindful of the mobilization readiness required of
3 members of the national guard and reserves, the adjutant
4 general may prescribe regulations and forms for a military
5 will. These regulations and forms shall be designed to achieve
6 basic [~~testamentary~~] testamentary disposition of the member's
7 property in contemplation of rapid troop mobilization and of
8 the hazards of armed conflict. They shall be designed for
9 preparation by unit administrative personnel according to the
10 desires of the testator. No liability or cause of action shall
11 attach to the erroneous act or omission of any person assisting
12 a testator in the preparation or execution of a military will.

13 C. The scope of a military will shall be limited to
14 the following dispositions and provisions:

15 (1) disposition of the testator's entire estate
16 to the testator's spouse or in the event the testator is
17 predeceased by the spouse then to the testator's children in
18 equal shares and to their descendants by right of
19 representation;

20 (2) if the testator is not survived by a spouse,
21 children or lineal descendents, then disposition of the
22 testator's entire estate shall be according to the laws of
23 intestate succession;

24 (3) a guardian for minor children may be
25 nominated by the testator in the event that any minor child's

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1 other natural parent is or shall become unwilling or unable to
2 serve as the child's guardian;

3 (4) a personal representative may be nominated
4 by the testator in the event that the testator's surviving
5 spouse is or shall become unwilling or unable to so serve; and

6 (5) trust provisions are prohibited as beyond
7 the scope of a military will.

8 D. A military will shall be executed, witnessed and
9 attested to before two persons, one of whom [~~must~~] shall be a
10 commissioned, warrant or noncommissioned officer of the
11 national guard or state [~~defense force~~] guard. A military will
12 so executed, witnessed and attested shall be deemed a self-
13 proving will.

14 E. A military will may be executed only by a member
15 of the national guard or reserves and not by a member's
16 civilian dependents.

17 F. A military will shall, during the testator's
18 membership in the national guard or reserves, be maintained as
19 a permanent record in the member's military personnel records
20 jacket. In the event of the member's death, the will shall
21 promptly be delivered by military authorities to the
22 appropriate court of competent jurisdiction.

23 G. Upon discharge, separation or retirement of the
24 member from the national guard or reserves, a military will
25 shall become [~~null and~~] void."

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1 Section 9. Section 20-5-1 NMSA 1978 (being Laws 1987,
2 Chapter 318, Section 32) is amended to read:

3 "20-5-1. NEW MEXICO STATE [~~DEFENSE FORCE~~] GUARD
4 ESTABLISHED--NOT IN FEDERAL SERVICE--DEFINITIONS.--

5 A. The "New Mexico state [~~defense force~~] guard" is
6 established as an element of the militia in the department of
7 military affairs. [~~The members and organizations of the former~~
8 ~~New Mexico state guard are transferred to the New Mexico state~~
9 ~~defense force on the effective date of this act.~~]

10 B. Nothing in Chapter 20 NMSA 1978 shall be construed
11 as authorizing the New Mexico state [~~defense force~~] guard or
12 any part thereof to be called, ordered or in any manner drafted
13 by federal authorities into the military service of the United
14 States, but no person by reason of [~~his~~] the person's
15 enlistment or appointment in the state [~~defense force~~] guard
16 shall be exempted from military service under any law of the
17 United States.

18 C. The following definitions apply to the duty
19 statuses under which members of the state [~~defense force~~] guard
20 serve:

21 (1) "militia duty" means the performance of
22 actual military service for the state in time of need when
23 called by the governor or adjutant general following
24 mobilization of the national guard. It may be performed by the
25 standing cadre of the state [~~defense force~~] guard at any time

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1 so ordered following mobilization of the national guard. It
2 may be performed by the unorganized militia following its call
3 by the governor pursuant to Subsection B of Section 20-2-6 NMSA
4 1978 [~~of this chapter~~], in which case it shall include the
5 post-call training of the New Mexico state [~~defense force~~]
6 guard pursuant [~~thereto~~] to that section; and

7 (2) "cadre duty" means the normal service and
8 training performed by the standing cadre of the state [~~defense~~
9 ~~force~~] guard in anticipation and support of militia duty,
10 including organization, administration and other pre-call
11 matters."

12 Section 10. Section 20-5-3 NMSA 1978 (being Laws 1987,
13 Chapter 318, Section 34) is amended to read:

14 "20-5-3. COMPOSITION--ENLISTMENT--APPOINTMENT.--

15 A. The state [~~defense force~~] guard shall consist of
16 persons between the ages of eighteen and sixty-four years
17 voluntarily appointed or voluntarily enlisted therein and such
18 additional members of the unorganized militia as therein may be
19 appointed, enlisted, enrolled or inducted as provided by law.
20 Volunteer members may be retained beyond age sixty-four with
21 their consent by direction of the adjutant general.

22 B. The officers of the state [~~defense force~~] guard
23 shall be appointed by the governor and serve at [~~his~~] the
24 governor's pleasure. They shall be chosen from the public and
25 private leadership bases within local communities so as to best

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1 enable the community to efficiently muster and lead its people
2 and protect its assets and well being."

3 Section 11. Section 20-5-4 NMSA 1978 (being Laws 1987,
4 Chapter 318, Section 35) is amended to read:

5 "20-5-4. ADMINISTRATION OF OATHS.--All commissioned
6 officers of the national guard and of the state [~~defense force~~]
7 guard, and such other persons or officials as the adjutant
8 general shall prescribe, are [~~hereby~~] authorized and empowered
9 to administer oaths and affirmations in all matters pertaining
10 to and concerning the state [~~defense force~~] guard and to
11 administer oaths and affirmations in the enlistment of soldiers
12 [~~therefor~~] for the state guard."

13 Section 12. Section 20-5-6 NMSA 1978 (being Laws 1987,
14 Chapter 318, Section 37) is amended to read:

15 "20-5-6. UNIFORM--RANK PRECEDENCE AND COMMAND.--

16 A. The state [~~defense force~~] guard shall be
17 uniformed. The governor shall by regulation prescribe the
18 uniform and insignia of the [~~New Mexico~~] state [~~defense force~~]
19 guard, which uniform and insignia shall include distinctive
20 devices identifying it as the uniform of the state [~~defense~~
21 ~~force~~] guard and distinguishing it from the national guard.
22 When in uniform, members of the state [~~defense force~~] guard
23 will reasonably conform to the dress and appearance standards
24 of the national guard. The wearing of permanent military
25 decorations earlier awarded is authorized.

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1 B. The grade structure of the state [~~defense force~~]
2 guard shall to the extent practicable be the same as that
3 prescribed for the army national guard.

4 C. The senior line officer without distinction as to
5 component present in any organization or formation of the state
6 [~~defense force~~] guard shall command, unless the adjutant
7 general shall designate otherwise."

8 Section 13. Section 20-5-7 NMSA 1978 (being Laws 1987,
9 Chapter 318, Section 38) is amended to read:

10 "20-5-7. DISCIPLINE.--

11 A. The discipline of the state [~~defense force~~] guard
12 shall, to the extent practicable, conform to that of the army
13 national guard.

14 B. When performing militia duty, members of the state
15 [~~defense force~~] guard are subject to the Code of Military
16 Justice, Chapter 20, Article 12 NMSA 1978.

17 C. Standards of conduct applicable to the army
18 national guard are applicable to members of the state [~~defense~~
19 ~~force~~] guard when performing militia duty or cadre duty."

20 Section 14. Section 20-5-8 NMSA 1978 (being Laws 1987,
21 Chapter 318, Section 39) is amended to read:

22 "20-5-8. DISCHARGE--DISMISSAL.--

23 A. Upon expiration of the term of service for which
24 appointed or enlisted, a member of the state [~~defense force~~]
25 guard shall be entitled to a discharge; provided that no member

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1 shall be discharged by reason of expiration of [~~his~~] the
2 member's term of service while in the active service of the
3 state.

4 B. A member of the state [~~defense force~~] guard may be
5 dismissed or discharged prior to the expiration of [~~his~~] the
6 member's term of service by sentence of a court-martial or for
7 misconduct, inefficiency, unsatisfactory participation,
8 personal hardship or for such other cause as the adjutant
9 general finds and the governor approves. Discharge proceedings
10 shall, as nearly as practicable, follow the laws, rules and
11 procedures prescribed for the army national guard.

12 C. Discharge certificates shall reflect the character
13 of the member's service. They shall conform as closely as
14 practicable to discharge certificates of the army national
15 guard."

16 Section 15. Section 20-5-9 NMSA 1978 (being Laws 1987,
17 Chapter 318, Section 40) is amended to read:

18 "20-5-9. ARMS AND EQUIPMENT--FACILITIES.--

19 A. The state [~~defense force~~] guard, to the extent
20 practicable, shall be equipped as needed for training and for
21 actual state service.

22 B. To the extent available and permitted by federal
23 law, armories and other facilities of the national guard and
24 other state facilities may be utilized for the storage and
25 maintenance of arms, equipment and supplies of the state

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1 ~~[defense force]~~ guard and for the assembly, drill and
2 instruction of its members."

3 Section 16. Section 20-5-10 NMSA 1978 (being Laws 1987,
4 Chapter 318, Section 41, as amended) is amended to read:

5 "20-5-10. TRAINING.--

6 A. The adjutant general shall promulgate regulations
7 governing the training of the state ~~[defense force]~~ guard,
8 including its standing cadre.

9 B. To the extent permitted by law, officers and
10 members of the national guard may be detailed to train and
11 instruct the standing cadre of the state ~~[defense force]~~ guard.
12 Members of its standing cadre may attend service schools and
13 other courses of training or instruction conducted by state or
14 federal agencies in cadre duty status. Such training shall be
15 paid for only to the extent allowed in Subsection B of Section
16 20-5-9 NMSA 1978.

17 Section 17. Section 20-5-11 NMSA 1978 (being Laws 1987,
18 Chapter 318, Section 42) is amended to read:

19 "20-5-11. MEMBERS NOT LIABLE FOR ACTS IN PERFORMANCE OF
20 DUTY.--Members of the state ~~[defense force]~~ guard shall not
21 incur personal civil liability for acts performed in the line
22 of militia duty or cadre duty or in travel directly to or from
23 said duty, and the state shall defend and indemnify against any
24 such claims as are brought, and the state shall be substituted
25 as a party defendant for the member."

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1 Section 18. Section 20-5-13 NMSA 1978 (being Laws 1987,
2 Chapter 318, Section 44) is amended to read:

3 "20-5-13. DISCRIMINATION PROHIBITED--PENALTY.--No
4 employer or agent thereof shall refuse to hire, penalize or
5 discharge from employment any person because of membership in
6 the state [~~defense force~~] guard or prevent the member from
7 performing any duty [~~he~~] the member may be called upon to
8 perform by proper authority. Willful violation of this section
9 shall be a misdemeanor."

10 Section 19. Section 20-5-14 NMSA 1978 (being Laws 1987,
11 Chapter 318, Section 45) is amended to read:

12 "20-5-14. MILITARY LEAVE.--All state, county, municipal,
13 school district and other public employees who are members of
14 the state [~~defense force~~] guard shall be given not to exceed
15 fifteen working days military leave with pay per federal fiscal
16 year when they are ordered by the adjutant general to cadre
17 duty with such organized units, such leave to be in addition to
18 other leave or vacation time with pay to which such employees
19 are otherwise entitled. The governor may grant any member of
20 the state [~~defense force~~] guard who is a state employee
21 additional military leave with pay, in excess of that allowed
22 above, not to exceed fifteen working days per year for periods
23 of cadre duty for training when [~~he~~] the governor deems that
24 such training will benefit the state by enabling that employee
25 to better perform the duties required in [~~his~~] the employee's

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1 state occupation."

2 Section 20. Section 20-5-15 NMSA 1978 (being Laws 1987,
3 Chapter 318, Section 46) is amended to read:

4 "20-5-15. EXEMPTIONS--PROCESS--UNIFORMS AND EQUIPMENT.--

5 A. Members of the state [~~defense force~~] guard shall
6 not be subject to misdemeanor arrest, jury duty or to other
7 civil process while going to, remaining at or returning from
8 any place at which the member is required to perform militia
9 duty. This exemption shall not preclude the proper issuance of
10 traffic citations or temporary delays which do not materially
11 impede the timely performance of militia duty or arrest for
12 driving while intoxicated.

13 B. Uniforms, arms and equipment required by law or
14 regulations to be owned by members of the state [~~defense force~~]
15 guard and all uniforms, equipment or other property of the
16 state or the United States issued to members of the state
17 [~~defense force~~] guard shall be exempt from all suits,
18 distresses, executions or sales for debt or payment of taxes."

19 Section 21. Section 20-5-16 NMSA 1978 (being Laws 2003,
20 Chapter 111, Section 1) is amended to read:

21 "20-5-16. STATE [~~DEFENSE FORCE~~] GUARD--WORKERS'
22 COMPENSATION.--

23 A. When a member of the state [~~defense force~~] guard
24 is on state-ordered militia duty, [~~he~~] the member is a worker
25 under the Workers' Compensation Act and the department of

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1 military affairs is [~~his~~] the member's employer.

2 B. The average weekly wage of a member of the state
3 defense force shall be computed at the pay earned in [~~his~~] the
4 member's civilian capacity. Disability benefits to a member of
5 the state [~~defense force~~] guard shall be limited to medical
6 benefits and two-thirds of [~~his~~] the member's civilian pay if
7 [~~he~~] the member is unable to work.

8 C. A member of the state [~~defense force~~] guard shall
9 not be considered a worker under the Workers' Compensation Act
10 when performing cadre duty.

11 D. As used in this section:

12 (1) "cadre duty" means the normal service and
13 training of the standing cadre of the state [~~defense force~~]
14 guard in anticipation and support of militia duty, including
15 organization, administration and other pre-call matters; and

16 (2) "militia duty" means the performance of
17 actual military service for the state in time of need when
18 called by the governor or adjutant general following
19 mobilization of the national guard. If performed by the
20 unorganized militia following its call by the governor pursuant
21 to Section 20-2-6 NMSA 1978, it shall include the post-call
22 training of the New Mexico state [~~defense force~~] guard as
23 required by that call."

24 Section 22. Section 20-8-2 NMSA 1978 (being Laws 1987,
25 Chapter 318, Section 53, as amended) is amended to read:

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1 "20-8-2. DEFINITIONS.--

2 A. "Armory" means any building, training area,
3 warehouse, vehicle storage compound, organizational maintenance
4 shop or other facility and the lands appurtenant [~~thereto~~] to
5 them used by the national guard for the storage and maintenance
6 of arms or military equipment or the administration or training
7 of the national guard and state [~~defense force~~] guard
8 personnel.

9 B. "Armory rental" means the casual rental of all or
10 part of an armory facility to an individual or organization for
11 a limited and specified purpose, duration and fee, which use is
12 not in conflict with the ongoing occupancy and use of the
13 armory by the national guard or state [~~defense force~~] guard.

14 C. "Local armory" means a particular armory by the
15 name designation of the municipality or county commonly
16 associated with it, including the armory building proper and
17 any appurtenant facilities co-located with it.

18 D. "Armory board council" means the advisory body
19 comprised of the [~~chairmen~~] chairs of all local armory boards,
20 serving ex officio, and of the members of the state armory
21 board, chaired by the adjutant general and convened semi-
22 annually by the call of the state armory board to aid and
23 advise that board in the formation of its regulations and
24 policies."

25 Section 23. Section 20-9-5 NMSA 1978 (being Laws 1987,

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1 Chapter 318, Section 62) is amended to read:

2 "20-9-5. SECURITY FOR PROPERTY.--The adjutant general may
3 prescribe regulations for the obtaining of collateral to
4 guarantee the return of arms, uniforms, equipment or other
5 military property issued to members of the national guard or
6 the state [~~defense force~~] guard in an amount at least equal to
7 the value of the property issued and for such duration as is
8 deemed appropriate. Such collateral may include cash, surety
9 bonds, certificates of title or other good and valuable
10 consideration. Property with investment value shall be
11 deposited at interest, that interest to be paid to the member
12 with return of the collateral upon proper return of the
13 property in serviceable condition, fair wear and tear
14 excepted."

15 Section 24. Section 20-10-1 NMSA 1978 (being Laws 1987,
16 Chapter 318, Section 63) is amended to read:

17 "20-10-1. AWARDS AUTHORIZED.--There are established and
18 authorized within Chapter 20, Article 10 NMSA 1978 awards for
19 presentation to units and members of the national guard and the
20 [~~New Mexico~~] state [~~defense force~~] guard and, where indicated,
21 for presentation to other persons for recognized service to the
22 national guard or [~~New Mexico~~] state [~~defense force~~] guard, to
23 the state or to the United States."

24 Section 25. Section 20-10-2 NMSA 1978 (being Laws 1987,
25 Chapter 318, Section 64) is amended to read:

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1 "20-10-2. AWARDS BOARDS.--

2 A. The adjutant general shall appoint the members of
3 awards boards for the army national guard and the air national
4 guard, which shall each meet not less than quarterly to review
5 recommendations for state and federal awards and decorations
6 submitted by their respective unit commanders and others. The
7 army national guard awards board shall also review and act on
8 recommendations for such awards and decorations relating to the
9 state [~~defense force~~] guard and shall include one or more
10 members of the state [~~defense force~~] guard appointed by the
11 adjutant general whenever considering such matters.

12 B. The adjutant general may by regulation delegate
13 award authority to battalion commanders, group commanders, or
14 equivalent, of the national guard, for members of their
15 command, for the following awards and their subsequent devices:

16 (1) such United States awards and decorations as
17 are permitted to be so delegated in United States military
18 regulations;

19 (2) the outstanding service medal;

20 (3) the long service medal;

21 (4) the good conduct medal; and

22 (5) the perfect attendance ribbon."

23 Section 26. Section 20-10-5 NMSA 1978 (being Laws 1987,
24 Chapter 318, Section 67) is amended to read:

25 "20-10-5. MEDAL OF VALOR WITH PALM.--The governor may

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1 award a medal of valor with palm and with accompanying ribbon
2 to any member of the national guard or state [~~defense force~~]
3 guard who [~~distinguishes himself by~~] performs an extraordinary
4 act of personal bravery and heroism, at the risk of [~~his~~] the
5 member's own life, above and beyond the call of duty."

6 Section 27. Section 20-10-6 NMSA 1978 (being Laws 1987,
7 Chapter 318, Section 68) is amended to read:

8 "20-10-6. MEDAL OF VALOR.--The governor may award a medal
9 of valor with accompanying ribbon to any member of the national
10 guard or state [~~defense force~~] guard who [~~distinguishes himself~~
11 ~~by~~] performs an uncommon act of valor, not necessarily at the
12 risk of [~~his~~] the member's own life, under circumstances where
13 refraining from so acting would not have subjected the
14 recipient to criticism."

15 Section 28. Section 20-10-8 NMSA 1978 (being Laws 1987,
16 Chapter 318, Section 70) is amended to read:

17 "20-10-8. DISTINGUISHED SERVICE MEDAL.--The governor may
18 award a distinguished service medal with accompanying ribbon to
19 any member of the national guard or state [~~defense force~~] guard
20 who [~~distinguishes himself by~~] performs an unselfish, untiring
21 and exceptionally meritorious period of service or act
22 resulting in extraordinary benefit to the state or to the
23 United States."

24 Section 29. Section 20-10-10 NMSA 1978 (being Laws 1987,
25 Chapter 318, Section 72) is amended to read:

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1 "20-10-10. OUTSTANDING SERVICE MEDAL.--The adjutant
2 general may award an outstanding service medal with
3 accompanying ribbon to any person who, while serving in any
4 capacity with or as a member of the national guard or state
5 [~~defense force~~] guard, performs the service required or
6 requested of [~~him~~] the person through the exertion of extra
7 effort and in a manner that brings credit to [~~himself~~] the
8 person, to [~~his~~] the person's unit and to the state, either
9 over a period of time or on a specific occasion."

10 Section 30. Section 20-10-11 NMSA 1978 (being Laws 1987,
11 Chapter 318, Section 73) is amended to read:

12 "20-10-11. OUTSTANDING UNIT CITATION.--The governor may
13 award an outstanding unit citation of appropriate design with
14 accompanying individual ribbon to any recognized unit of the
15 national guard or state [~~defense force which~~] guard that,
16 through outstanding effort of all its members, has excelled in
17 the performance of its duty and mission for a period of service
18 in a manner that clearly exceeds that of other units, within or
19 without the state, similar in composition or mission. In
20 extraordinary circumstances, a "V" device may be awarded to
21 denote valor exemplified by the unit."

22 Section 31. Section 20-10-12 NMSA 1978 (being Laws 1987,
23 Chapter 318, Section 74) is amended to read:

24 "20-10-12. SERVICE RIBBON AND LONG-SERVICE MEDAL.--

25 A. The adjutant general shall present a service

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1 ribbon to those members of the national guard and state
2 [~~defense force~~] guard who have completed five years of
3 honorable service in the national guard or state [~~defense~~
4 ~~force~~] guard. This service ribbon shall be of identical design
5 to the ribbon of the long-service medal.

6 B. The adjutant general shall present a long-service
7 medal to those members of the national guard and state [~~defense~~
8 ~~force~~] guard who have completed ten years of honorable service
9 in either the national guard or the state [~~defense force~~]
10 guard. The medal and accompanying ribbon shall have an
11 appropriate numeral device affixed signifying total years of
12 service beyond ten in increments of five."

13 Section 32. Section 20-10-13 NMSA 1978 (being Laws 1987,
14 Chapter 318, Section 75) is amended to read:

15 "20-10-13. GOOD CONDUCT MEDAL.--The adjutant general may
16 award a good conduct medal with accompanying ribbon to [~~any~~] an
17 enlisted member of the national guard or state [~~defense force~~]
18 guard who completes a three-year period of service free from
19 unauthorized absence, reprimand, court-martial or other
20 disciplinary action and free from any civilian conviction.
21 Subsequent three-year periods of service shall be acknowledged
22 by the presentation and wearing of an affixed device signifying
23 in arabic numerals the number of such awards to the member."

24 Section 33. Section 20-10-14 NMSA 1978 (being Laws 1987,
25 Chapter 318, Section 76) is amended to read:

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1 "20-10-14. PERFECT ATTENDANCE RIBBON.--The adjutant
2 general may present a perfect attendance ribbon to those
3 members commissioned, warranted and enlisted of the national
4 guard or state [~~defense force~~] guard who for the calendar year
5 have had a perfect drill and annual training attendance. Unit
6 commanders shall forward a list of all qualifying nominees to
7 the awards board each January for the preceding calendar year.
8 Subsequent annual periods of service shall be acknowledged by
9 the presentation and wearing of an affixed device signifying in
10 arabic numerals the number of such awards to the member."

11 Section 34. Section 20-10-15 NMSA 1978 (being Laws 1987,
12 Chapter 318, Section 77) is amended to read:

13 "20-10-15. ACADEMY SERVICE RIBBON.--The adjutant general
14 may present an academy service ribbon to those enlisted members
15 of the national guard or state [~~defense force~~] guard who have
16 successfully completed a noncommissioned officer educational
17 system course or noncommissioned officer academy. An arabic
18 numeral shall reflect successful completion of higher level
19 courses."

20 Section 35. Section 20-11-1 NMSA 1978 (being Laws 1987,
21 Chapter 318, Section 79) is amended to read:

22 "20-11-1. FAILURE TO APPEAR--PENALTY.--

23 A. Any person in the unorganized militia ordered by
24 the governor into active service in the national guard or state
25 [~~defense force~~] guard pursuant to the powers enumerated in

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1 Chapter 20 NMSA 1978 and notified of the order to service who
2 fails to appear without justification within the time
3 prescribed in the notice to the place [~~which~~] where ordered
4 shall be guilty of a misdemeanor.

5 B. Any person failing to appear as stated in
6 Subsection A of this section and whose failure to appear is
7 willful and with the intent to avoid or evade military service
8 shall be guilty of a fourth degree felony."

9 Section 36. Section 20-11-2 NMSA 1978 (being Laws 1987,
10 Chapter 318, Section 80) is amended to read:

11 "20-11-2. HINDERING NATIONAL GUARD--PENALTY.--The
12 commanding officer of any part of the national guard or state
13 [~~defense force~~] guard called into the active service of the
14 state, when performing any military duty in any street or
15 highway, may require any persons to yield the right of way to
16 the national guard or state [~~defense force~~] guard; provided
17 that the carriage of United States mail, the legitimate
18 functions of the police and the progress and operations of
19 ambulances, fire engines and emergency vehicles shall not be
20 interfered with. All persons who hinder, delay or obstruct the
21 national guard or state [~~defense force~~] guard in the active
22 service of the state or who attempt to do so are guilty of a
23 misdemeanor."

24 Section 37. Section 20-12-2 NMSA 1978 (being Laws 1987,
25 Chapter 318, Section 87, as amended) is amended to read:

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1 "20-12-2. ADOPTION OF UNIFORM CODE OF MILITARY JUSTICE--
2 MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1984--UNITED STATES
3 MILITARY REGULATIONS AND DIRECTIVES--DECISIONS OF UNITED STATES
4 COURT OF MILITARY APPEALS AND COURTS OF MILITARY REVIEW--
5 LIMITATIONS AND EXCEPTIONS.--The Uniform Code of Military
6 Justice, Title 10, Chapter 47, United States Code; the Manual
7 for Courts-Martial, United States, 1984, (Executive Order No.
8 12437 (13 April 1984), as amended); the regulations and
9 directives of the United States military forces made applicable
10 to the national guard; and the decisions of the United States
11 court of military appeals and of the armed services courts of
12 military review are adopted as the Code of Military Justice,
13 the Manual for Courts-Martial, the regulations and the
14 precedential case law of this state on military justice
15 matters, respectively, except as [~~hereinafter~~] limited or
16 stated within Chapter 20, Article 12 NMSA 1978. These
17 documents shall be reasonably construed and applied so as to
18 achieve and effect the high level of order and discipline
19 necessary for the military forces of the state. Time standards
20 other than periods of limitations and pretrial confinement may
21 be waived by convening authorities or military judges where
22 such standards would be impracticable within the traditional
23 operations of militia forces. Where regulations and procedures
24 for the United States army differ from those of the United
25 States air force, the army national guard and the state

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1 ~~[defense force]~~ guard shall observe the regulations and
2 procedures of the United States army and the air national guard
3 shall observe the regulations and procedures of the United
4 States air force. References therein and in Sections 20-12-13
5 through 20-12-73 NMSA 1978 to "the United States" shall mean
6 "the state" where such meaning has reasonable application.
7 References to "the president" or to "the secretary" (meaning
8 the secretary of the army or the secretary of the air force)
9 shall mean "the governor". The adjutant general may by
10 regulation prescribe practical changes or variances from the
11 procedural provisions of the Uniform Code of Military Justice,
12 from the Manual for Courts-Martial or from service regulations
13 subservient thereto."

14 Section 38. Section 20-12-3 NMSA 1978 (being Laws 1987,
15 Chapter 318, Section 88, as amended) is amended to read:

16 "20-12-3. PERSONS SUBJECT TO THE CODE--APPLICABILITY OF
17 THE CODE.--The Code of Military Justice applies to all members
18 of the national guard when not in federal service under Title
19 10, United States Code and to all members of the state ~~[defense~~
20 ~~force]~~ guard when performing militia duty. The code has
21 territorial applicability both within and without the state.
22 The code has applicability at all times, provided that either
23 the member is in a duty status or, if not in a duty status,
24 that there is a connection between the act or omission
25 constituting the offense and the efficient functioning of the

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1 military forces; however, this grant of military jurisdiction
2 shall not preclude or limit civilian jurisdiction over an
3 offense, which is limited only by the prohibition of double
4 jeopardy."

5 Section 39. Section 20-12-4 NMSA 1978 (being Laws 1987,
6 Chapter 318, Section 89) is amended to read:

7 "20-12-4. CONVENING AUTHORITIES--NONJUDICIAL PUNISHMENT
8 AUTHORITIES.--

9 A. A general, special or summary court-martial may be
10 convened by the governor or by the adjutant general.

11 B. A special or summary court-martial may be convened
12 by the assistant adjutant general of the army national guard,
13 as to all members of the army national guard; by the commanding
14 general of the 111th air defense artillery brigade, as to
15 members of [~~his~~] the commanding general's command; by the
16 commanding officer of troop command, as to all members of [~~his~~]
17 the commanding officer's command; by the assistant adjutant
18 general of the air national guard, as to all members of the air
19 national guard; by the assistant adjutant general of the state
20 [~~defense force~~] guard, as to all members of the state [~~defense~~
21 ~~force~~] guard; and to the commanders of such equivalent level
22 commands as may be organized in the future.

23 C. A summary court-martial may be convened by a
24 battalion commander, group commander or equivalent, as to all
25 members of [~~his~~] the commander's command.

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1 D. Nonjudicial punishment authority is conferred upon
2 all general, special or summary court-martial convening
3 authorities and upon company, battery and squadron commanders
4 or equivalent as to members of their command."

5 Section 40. Section 20-12-5 NMSA 1978 (being Laws 1987,
6 Chapter 318, Section 90) is amended to read:

7 "20-12-5. JUDGE ADVOCATES.--

8 A. The adjutant general may appoint commissioned
9 officers of the national guard and of the state [~~defense force~~]
10 guard who are members of the bar of the supreme court of New
11 Mexico as judge advocates. One judge advocate shall be
12 designated by the adjutant general as the state judge advocate.
13 The remaining senior judge advocate of each of the army
14 national guard, the 111th air defense artillery brigade, the
15 air national guard and the state [~~defense force~~] guard shall be
16 designated as the staff judge advocate for their respective
17 component, but this designation shall not preclude their
18 assignment as military judge, trial counsel or defense counsel
19 to other components in individual cases where they have not
20 earlier participated. All other judge advocates shall be
21 designated as assistant staff judge advocates. Designation as
22 a judge advocate may be as a primary military specialty or as
23 an additional duty, with their concurrence, for line officers
24 who are members of the bar of the supreme court of New Mexico.

25 B. Judge advocates shall make frequent inspections in

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1 the field in supervision of the administration of military
2 justice. Judge advocates of one component may participate in
3 the administration of military justice in other components.
4 Appointment as a judge advocate by the adjutant general shall
5 substitute for Article 27(b)(2), Uniform Code of Military
6 Justice certification.

7 C. The adjutant general, with the concurrence of the
8 state judge advocate, shall appoint one military judge from the
9 army national guard and one military judge from the air
10 national guard. To the extent practicable, military judges
11 will hear cases from components other than their own.

12 Appointment as military judge shall not preclude assignment of
13 judge advocate duties which are not in conflict with those of a
14 military judge. A judge advocate's performance of duty as a
15 military judge shall not be the subject of comment in any
16 effectiveness, fitness or efficiency report beyond a statement
17 that the officer is designated as military judge.

18 D. Federally recognized judge advocates of other
19 active and reserve military components may, with their
20 concurrence, serve as judge advocates for the national guard
21 and the state [~~defense force~~] guard when so requested and
22 detailed by the state judge advocate."